

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SARKIS N. SHMAVONIAN)

For Appellant: Sarkis N. Shmavonian, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Kathleen M. Morris
Counsel

O P I N I O N

This appeal is made pursuant to section **18594** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Sarkis N. Shmavonian against a proposed assessment of additional personal income tax and penalties totaling \$80.00 for the year 1972.

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After receiving information from the Internal Revenue Service concerning appellant's income, respondent searched its files and discovered that appellant had failed to file a California personal income tax return for 1972. Respondent then mailed appellant a notice and demand to file a return, but it received no response. Using the information available, respondent thereupon calculated appellant's taxable income and issued a deficiency assessment consisting of the appropriate tax plus two 25 percent penalties for failure to file a return and for failure to file after notice and demand. (Rev. & Tax. Code, §§ 18648, 18681, 18683.)

Appellant does not contest respondent's calculation of his state tax liability, but he argues that he paid that amount by a bank money order in early April 1973. Respondent apparently has no record of having received any such payment, however, and appellant has been unable to produce any proof, aside from his own allegation, that the payment was made. Under these circumstances we can only conclude that appellant has not, in fact, paid his tax liability for 1972. (Appeal of Wing Edwin and Faye Lew, Cal. St. Bd. of Equal., Sept. 17, 1973.)

On the penalty issue, appellant does not even allege that he filed a 1972 return. Respondent has not found one in its files, and so far as we know appellant has not filed one even as of today. Both of the failure to file penalties authorized by sections 18681 and 18683 may be excused if the taxpayer establishes that the delinquencies were due to reasonable cause and not **due** to willful neglect, but appellant has failed even to offer an explanation for his nonfiling. Clearly, therefore, he has not overcome the presumption of correctness that attaches to respondent's assertion of these penalties. (See Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977.)

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Sarkis N. Shmavonian against a proposed assessment of additional personal income tax and penalties in the amount of \$80.00 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April, 1977, by the State Board of Equalization.

William K. Bryant, Chairman
George E. Fenn, Member
Robert E. Fenn, Member
Joe S. Sauer, Member
_____, Member

ATTEST:

W. W. Denlop, Executive Secretary